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HOUSE BILL 388

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MIMI STEWART

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING FOR WARRANTLESS ARREST IN  
CASES OF DOMESTIC ABUSE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-1-7 NMSA 1978 (being Laws 1979,  
Chapter 178, Section 1, as amended) is amended to read:

"31-1-7. ARREST WITHOUT WARRANT--LIABILITY.--

A. Notwithstanding the provisions of any other law  
to the contrary, a peace officer may arrest a person and take  
that person into custody without a warrant ~~[when the officer is  
at the scene of a domestic disturbance and has]~~ within seventy-  
two hours of forming probable cause to believe that the person  
has committed an assault or a battery upon a household member.

~~[As used in this section: "household member" means a spouse;  
former spouse; family member, including a relative, parent,~~

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1 ~~present or former step-parent, present or former in-law, child~~  
2 ~~or co-parent of a child; or a person with whom the victim has~~  
3 ~~had a continuing personal relationship. Cohabitation is not~~  
4 ~~necessary to be deemed a household member for purposes of this~~  
5 ~~section.]~~

6 B. No peace officer shall be held criminally or  
7 civilly liable for making an arrest pursuant to this section,  
8 provided he acts in good faith and without malice.

9 C. Whether or not an arrest is made pursuant to this  
10 section, a peace officer may remain with the victim and assist  
11 the victim in getting to a shelter or receiving proper medical  
12 attention.

13 D. As used in this section, "household member" means  
14 a spouse; former spouse; family member, including a relative,  
15 parent, present or former step-parent, present or former in-law,  
16 child or co-parent of a child; or a person with whom the victim  
17 has had a continuing personal relationship. Cohabitation is not  
18 necessary to be deemed a household member for purposes of this  
19 section."

20 Section 2. Section 40-13-7 NMSA 1978 (being Laws 1987,  
21 Chapter 286, Section 7, as amended) is amended to read:

22 "40-13-7. LAW ENFORCEMENT OFFICERS--EMERGENCY  
23 ASSISTANCE--LIMITED LIABILITY--PROVIDING NOTIFICATION TO VICTIMS  
24 WHEN AN ABUSING HOUSEHOLD MEMBER IS RELEASED FROM  
25 DETENTION--STATEMENT IN JUDGMENT AND SENTENCE DOCUMENT.--

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A. A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.

B. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:

(1) advising the victim of the remedies available under the Family Violence Protection Act, the right to file a written statement or request for an arrest warrant and the availability of domestic violence shelters, medical care, counseling and other services;

(2) upon the request of the ~~[petitioner]~~ victim, providing or arranging for transportation of the victim to a medical facility or place of shelter;

(3) upon the request of the ~~[petitioner]~~ victim, accompanying the victim to the victim's residence to remove the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;

(4) upon the request of the ~~[petitioner]~~ victim, assist in placing the ~~[petitioner]~~ victim in possession of the dwelling or premises or otherwise assist in execution or service of ~~[the]~~ an order of protection;

(5) arresting the abusing household member

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1 without a warrant within seventy-two hours of forming probable  
2 cause, when appropriate, and including a written statement in  
3 the attendant police report to indicate that the arrest of the  
4 abusing household member was, in whole or in part, premised upon  
5 probable cause to believe that the abusing household member  
6 committed domestic abuse against the victim; and

7 (6) advising the victim when appropriate of the  
8 procedure for initiating proceedings under the Family Violence  
9 Protection Act or criminal proceedings and of the importance of  
10 preserving evidence.

11 C. The jail or detention center shall make a  
12 reasonable attempt to notify the arresting law enforcement  
13 agency or officer when the abusing household member is released  
14 from custody. The arresting law enforcement agency shall make a  
15 reasonable attempt to notify the victim that the abusing  
16 household member is released from custody.

17 D. Any law enforcement officer responding to ~~the~~ a  
18 request for assistance under the Family Violence Protection Act  
19 is immune from civil liability to the extent allowed by law.  
20 Any jail, detention center or law enforcement agency that makes  
21 a reasonable attempt to provide notification that an abusing  
22 household member is released from custody is immune from civil  
23 liability to the extent allowed by law.

24 E. A statement shall be included in a judgment and  
25 sentence document to indicate when a conviction results from the

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1 commission of domestic abuse. "

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**State of New Mexico**  
**House of Representatives**

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**FORTY-THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

February 12, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 388

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

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Thomas P. Foy, Chairman

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 1 Against

Yes: 8

No: Carpenter

Excused: King, Pederson, Rios, Sanchez

Absent: None

M \H0388

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**State of New Mexico  
House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 27, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
whom has been referred

HOUSE BILL 388

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

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Max Coll, Chairman

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FORTY- THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 16 For 0 Against

Yes: 16

Excused: Watchman

Absent: None

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1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997

HB 388/a

3  
4 March 16, 1997

5  
6 Mr. President:

7  
8 Your JUDICIARY COMMITTEE, to whom has been referred

9 HOUSE BILL 388, as amended

10  
11 has had it under consideration and reports same with  
12 recommendation that it DO PASS, amended as follows:

13  
14 1. On page 1, lines 20 and 21, remove the brackets and the  
15 line-through.

16 2. On page 1, line 21, strike the word "and" and insert "or".

17  
18 3. On page 1, line 22, strike "forming" and insert in lieu  
19 thereof "the incident formed"

20  
21 4. On page 1, line 23, after the word "member" insert "  
22 provided that the officer is otherwise unable to secure an arrest  
23 warrant due to the time constraint or urgency of the situation".

24 5. On page 4, line 1, before the word "forming" insert "the  
25 incident"

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

JUDICIARY COMMITTEE/HB 388

Page 11

6. On page 4, line 2, after the word "cause" insert ",  
provided that the officer is otherwise unable to secure an arrest  
warrant due to the time constraint or urgency of the situation".

Respectfully submitted,

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Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

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**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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JUDICIARY COMMITTEE/HB 388

Page 12

Date \_\_\_\_\_

The roll call vote was 5 For 2 Against

Yes: 5

No: Tsosie, McSorley

Excused: Sanchez

Absent: None

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